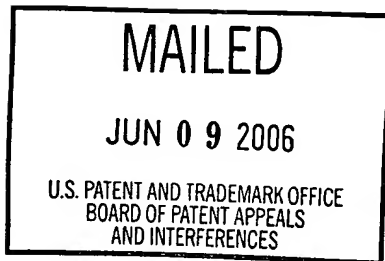


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TODD BOLZER and JEFFREY T. ROGERS



Appeal No. 2006-0104
Application No. 10/055,440

ON BRIEF

Before FRANKFORT, OWENS and CRAWFORD, Administrative Patent Judges.
FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 4. Claims 5 through 20, the only other claims remaining in the application, have been withdrawn from further consideration.

Appellants' invention relates to subterranean tanks for receiving sewage or serving as a cistern for holding water, which tanks are rotationally molded of synthetic resin material. As further noted on page 1 of the specification:

More particularly, the present invention is concerned with a tank of the foregoing type provided with parabolic wall construction and a portal arrangement for accommodating a uniquely and complementally configured cover or a synthetic resin riser which is constructed in such a manner that it may be trimmed in multiple locations along its axial length while retaining wall strength and the ability to couple to the tank and receive a cover thereon.

Claim 1, the sole independent claim on appeal, is representative of the subject matter before us on appeal and a copy of that claim can be found in the "Claims Appendix" attached to appellants' brief.

The prior art references relied upon by the examiner in rejecting the appealed claims are:

Wittenberg	2,218,188	Oct. 15, 1940
Hall	4,187,647	Feb. 12, 1980
Seizert et al. (Seizert)	5,207,463	May 4, 1993
Jones et al. (Jones)	5,525,007	Jun. 11, 1996

AK Industries, Inc., "The Best Around Underground", pages 1-16, (hereinafter AKI).

Claims 1 stands rejected under 35 U.S.C. § 102(b) as being anticipated by AKI.

Claim 1 also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over AKI in view of Jones and Hall.

Claim 2 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over AKI in view of Jones and Hall as applied to claim 1 above, and further in view of Wittenberg.

Claims 3 and 4¹ stand rejected under 35 U.S.C. § 103(a) as being unpatentable over AKI in view of Jones and Hall as applied to claim 1 above, and further in view of Wittenberg and Seizert.

Rather than reiterate the examiner's full statement of the above-noted rejections and the conflicting viewpoints advanced by the examiner and appellants regarding those rejections, we make reference to the answer (mailed May 6, 2005) for the examiner's

¹ See the brief at page 23 and the answer at page 9, wherein it is noted that the rejection of claim 2 under this ground of rejection in the final rejection mailed August 5, 2004 was in error and that the proper rejection should have been of claims 3 and 4. Thus, like appellant, for purposes of this appeal, we treat the rejection as being of claims 3 and 4.

reasoning in support of the rejections, and to appellants' brief (filed February 2, 2005) and reply brief (filed July 5, 2005) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellants' specification² and claims, to the applied prior art references, and to the respective positions articulated by appellants and the examiner. As a consequence of our review, we have made the determination that none of the examiner's rejections on appeal will be sustained. Our reasons follow.

² The specification of the present application (particularly pages 8-10) is replete with errors and inconsistencies with regard to the reference characters as earlier stated or assigned in the specification and also with regard to lack of correspondence with the showing in the drawings. In the event of further prosecution, both appellants and the examiner would do well to read the specification and correlate the reference characters within the specification itself and with the showing in the drawings with an eye toward correcting this problem.

We turn first to the examiner's rejection of claim 1 under 35 U.S.C. § 102(b) based on AKI. The examiner's statement of this rejection is found on pages 3-4 of the answer. For the reasons set forth on pages 8-11 of the brief and pages 2-8 of the reply brief, we agree with appellants that AKI does not anticipate the subterranean tank assembly of claim 1 on appeal. Like appellants, we fail to find any teaching or showing in AKI of a riser having a plurality of axially spaced continuous and circumscribing ribs wherein each of the ribs includes

a pair of substantially horizontal flanges radially oriented in a plane transverse to the longitudinal axis of the riser and connecting said ribs to said riser wall, said flanges each being complementally sized and configured relative to said rim whereby said a circumscribing cut through one of said ribs or said riser wall adjacent said flange will reduce the longitudinal length of said riser and whereby the remaining, normally bottommost flange of the riser may be coupled to the rim in sealing engagement.

Nor do we find that AKI provides a teaching or showing of a vessel and riser combination like that set forth in claim 1 on appeal. More particularly, the examiner has made no effort to explain where in AKI there is a vessel with at least one portal projecting upwardly from the vessel wall and presenting an opening for gaining access to the vessel chamber, wherein the portal includes "a rim having a substantially horizontal

circumferentially extending closure surface in surrounding relationship to the opening and an inwardly tapering receiving surface" and a riser including a normally bottommost connector portion adapted for coupling to the vessel rim, wherein the connector portion includes "an inwardly tapering surface complementally configured for mating with said receiving surface of said vessel in sealing engagement." Indeed, as pointed out by appellants in both the brief (page 11) and reply brief (pages 2-3), the examiner himself seems to recognize that AKI has no inwardly tapering receiving surface on the portal rim and complementally configured inwardly tapering surface on the connector portion of the riser. See, particularly, the first paragraph on page 5 of the answer, wherein the examiner expressly concedes the failings of AKI to teach such structure:

For the above reasons, we will not sustain the examiner's rejection of claim 1 under 35 U.S.C. 102(b) as being anticipated by AKI.

As for the rejection of claim 1 under 35 U.S.C. 103(a) based on AKI in view of Jones and Hall, we agree with appellants' assessment set forth in the brief (pages 11-20) and reply brief (pages 8-10). Simply stated, neither the concrete encasement (36) of Jones which surrounds and is spaced from the riser (20) therein (col. 3, lines 35-40), nor the extender rings (15) of Hall provide any teaching, suggestion or incentive for modifying the riser of the tank assembly seen in AKI so as to result in the structure claimed by appellants. Thus, we will not sustain the examiner's rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over AKI in view of Jones and Hall.

We have also reviewed the patents to Wittenberg and Seizert relied upon by the examiner in the rejections of dependent claims 2, 3 and 4 under 35 U.S.C. § 103(a). Here again, we agree with appellants' assessment of the rejections on appeal, noting particularly pages 20-25 of the brief and pages 10-13 of the reply brief. Thus, we will not sustain the examiner's rejection of claims 2, 3 and 4 under 35 U.S.C. § 103(a).

REVERSED

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Appeal No. 2006-0104
Application No. 10/055,440

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